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No. 87-1225

In The
Supreme Court of the United States
October Term, 1987

CHERRY HILL TOWNSHIP,
Petitioner,

v.

CAMDEN COUNTY BOARD OF TAXATION,
Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of New Jersey

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF NEW JERSEY

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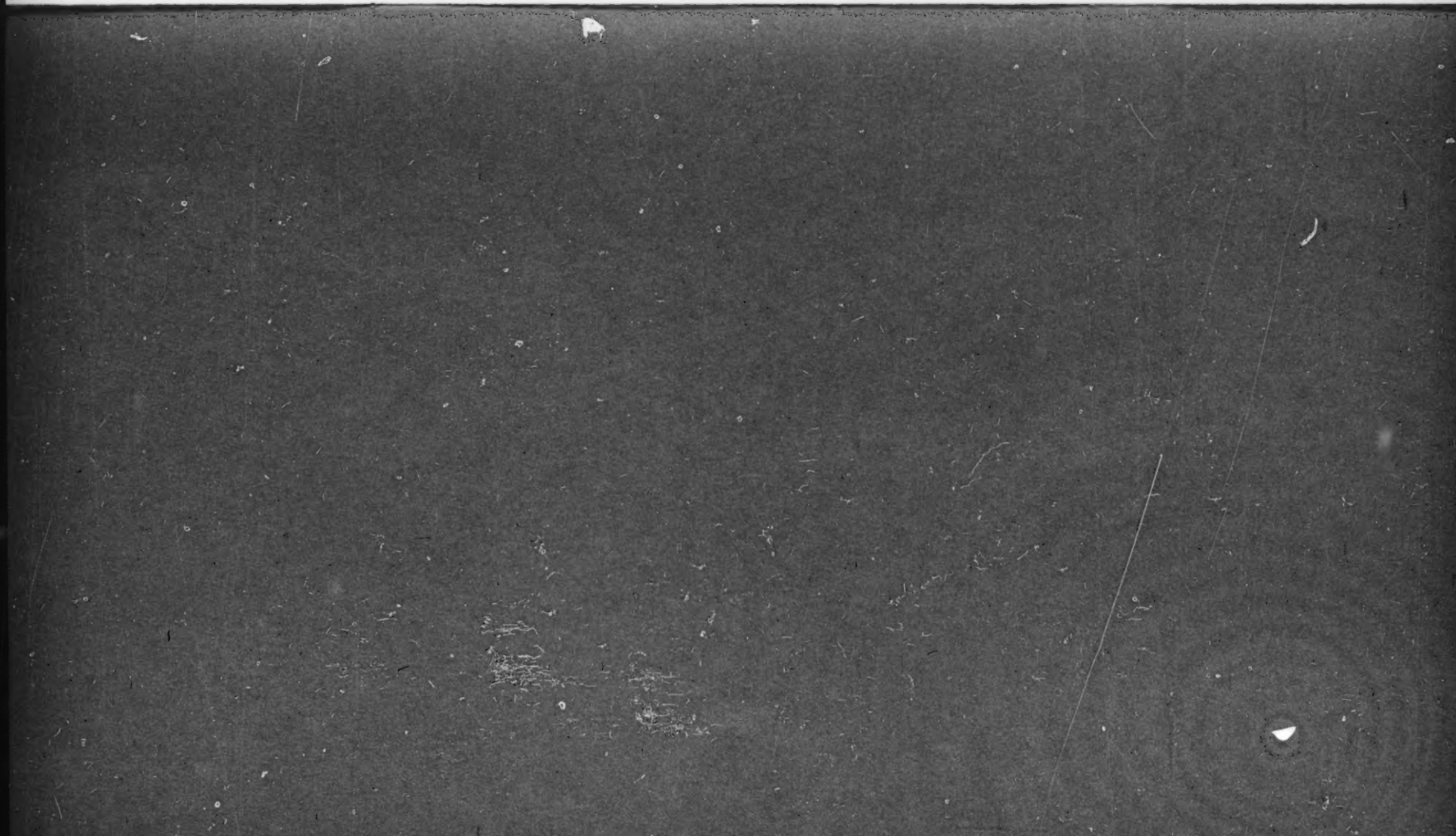

TABLE OF CONTENTS

Page

COUNTERSTATEMENT OF THE CASE 1

ARGUMENT:

SINCE THE FEDERAL EQUAL PROTECTION ISSUE CHALLENGING THE REVALUATION ORDER WAS NEVER RAISED BELOW, THE PETITION FOR CERTIORARI DOES NOT PRESENT A PROPER FEDERAL CONSTITUTIONAL ISSUE AND SHOULD BE DENIED. 3

CONCLUSION 10

TABLE OF AUTHORITIES

Page

Bergen County Board of Taxation v. Bogota, 114 *N.J. Super* 140, 275 *A.*2d 158 (App. Div. 1971) 7, 8

Essex County Board of Taxation v. Newark, 73 *N.J.* 69, 372 *A.*2d 607 (1977) 7

Kolender v. Lawson, 461 *U.S.* 352 (1983) 3

Lehnhausen v. Lake Shore Auto Parts Co., 410 *U.S.* 356 (1973) 9

Madden v. Kentucky, 309 *U.S.* 83 (1940) 9

McKenny v. Byrne, 82 *N.J.* 304, 412 *A.*2d 1041 (1980) ... 4

Ridgefield Park v. Bergen County Board of Taxation, 31 *N.J.* 420, 157 *A.*2d 829 (1960) app. dism. 365 *U.S.* 648 (1961) 5, 6

Smith v. Phillips, 455 *U.S.* 209 (1982) 3

Switz v. Kingsley, 37 *N.J.* 566, 182 *A.*2d 841 (1962) 4

Switz v. Middletown Twp., 23 *N.J.* 580, 130 *A.*2d 15 (1957) 5, 6

N.J. Const. (1947), Art. VIII, § 1, par. 1(a) 4
N.J.S.A. 2A:3A-1 *et seq.* 8
N.J.S.A. 54:2-35 7
N.J.S.A. 54:3-1 *et seq.* 4
N.J.S.A. 54:3-2 4
N.J.S.A. 54:3-13 5
N.J.S.A. 54:3-14 5
N.J.S.A. 54:3-16 5
N.J.S.A. 54:4-1 *et seq.* 1, 4
N.J.S.A. 54:4-23 7
N.J.S.A. 54:5-47 5

COUNTERSTATEMENT OF THE CASE

Petitioner, the Township of Cherry Hill ("Cherry Hill") in the State of New Jersey, is seeking, by writ of *certiorari,* to have this Court review a decision by the New Jersey Superior Court, Appellate Division, which the Supreme Court of New Jersey refused to review. The New Jersey Appellate Division affirmed a trial court judgment requiring Cherry Hill to implement a municipal-wide revaluation of its real property under the Local Property Tax Law, *New Jersey Stat. Ann.* ("*N.J.S.A.*") 54:4-1 *et seq.* Cherry Hill has never questioned the validity of the challenged revaluation order on federal or state constitutional grounds. Therefore, neither the trial court nor the Appellate Division ever addressed constitutional challenges to the need for Cherry Hill to revalue its real property for tax purposes.

The respondent is the Camden County Board of Taxation which issued an order, dated February 6, 1985, requiring Cherry Hill to implement a municipal-wide revaluation of real property for the 1987 tax year. The revaluation order was approved by the Director of the New Jersey Division of Taxation, on March 18, 1985. Cherry Hill filed a complaint in the Tax Court of New Jersey on April 23, 1985 challenging the revaluation order. The matter was tried on July 29 and 30, 1985 resulting in an oral decision by the tax court judge affirming the revaluation order.

The trial judge noted that Cherry Hill objected to the revaluation on two grounds: first, that the general coeffi-

cient of deviation* was only minimally above the 15% standard of deviation classified as reflective of a disparate assessment pattern; and second, that no revaluation firm could establish, by means of a revaluation program, an assessment pattern that would be more than marginally improved over the existing assessments. The trial judge found the record to reflect that the general co-efficient of deviation was only one of many factors to be considered in gauging the need for a revaluation in a taxing district. He determined that the coefficient data, standing by itself, supported the need for a revaluation in Cherry Hill. Furthermore, the judge held that the general and class ratios for properties in Cherry Hill were reflective of a poor and outdated assessment pattern. He found that the assessments had essentially remained the same for a large portion of the properties since the last revaluation had been implemented for Cherry Hill in 1975. The judge rejected Cherry Hill's claim that a revaluation would not improve the poor assessments for that municipality, since no facts were introduced to support that contention. A judgment was entered on August 8, 1985 affirming the revaluation order.

Cherry Hill filed a notice of appeal on October 1, 1985 from the whole of the judgment with the New Jersey Appellate Division. The Appellate Division, in an opinion dated October 9, 1986, affirmed the trial court, finding no merit in the municipality's arguments and no factual basis

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* The general coefficient of deviation is a statistical tool developed by the New Jersey Division of Taxation to measure the average deviation of assessments from the common level of assessments. A coefficient of 15% or higher is reflective of a significant level of nonuniformity in a municipality's assessment pattern.

for disagreeing with the trial court judgment. Cherry Hill filed a petition for certification seeking review of the entire Appellate Division judgment with the Supreme Court of New Jersey. The latter court declined to review this matter further in an order dated May 29, 1987.

ARGUMENT

SINCE THE FEDERAL EQUAL PROTECTION ISSUE CHALLENGING THE REVALUATION ORDER WAS NEVER RAISED BELOW, THE PETITION FOR CERTIORARI DOES NOT PRESENT A PROPER FEDERAL CONSTITUTIONAL ISSUE AND SHOULD BE DENIED.

This Court has consistently held that it will intervene in the state judicial process only to correct wrongs of a federal constitutional dimension and not to interfere with issues that are a matter of state constitutional, statutory or common law. *Smith v. Phillips*, 455 *U.S.* 209, 221 (1982). In evaluating issues concerning state law, a federal court should defer to the determinations by the state court particularly if the state court decision was primarily factually based. *Kolender v. Lawson*, 461 *U.S.* 352, 355 (1983). As noted, Cherry Hill never raised a federal constitutional question below and, in fact, never presented any proofs relating to the constitutional challenge raised in this proceeding.*

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* It is not even clear as a matter of New Jersey state law as to whether Cherry Hill has the appropriate standing to raise the constitutional issue since the municipality is a creature of the

(Continued on following page)

Nevertheless, in light of this petition having been filed, it is appropriate to place the revaluation order being challenged in the proper legal context. The county boards of taxation,* as agents of the New Jersey Legislature, have the responsibility of implementing the state constitutional directive concerning the taxation of real property:

> Property shall be assessed for taxation under general laws and by uniform rules. All real property assessed and taxed locally or by the State for allotment and payment to taxing districts shall be assessed according to the same standard of value, except as otherwise permitted herein, and such real property shall be taxed at the general tax rate of the taxing district in which the property is situated, for the use of such taxing district. [*N.J. Const.* (1947), Art. VIII, § I, par. 1(a)]

This constitutional standard requires that assessments under the Local Property Tax Law, *N.J.S.A.* 54:4-1 *et seq.*, must be based upon general laws and uniform rules to secure fairness in the taxing scheme. *Switz v. Kingsley*, 37 *N.J.* 566, 572, 182 *A.*2d 841, 850 (1962). In accordance with this constitutional instruction, the New Jersey Legislature has charged that each county board shall:

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state. *See McKenny v. Byrne* 82 *N.J.* 304, 315, 412 *A.*2d 1041, 1049 (1980). However, because Cherry Hill's constitutional argument is only now being raised, the New Jersey courts have not had an opportunity to consider Cherry Hill's standing to raise the constitutional issue.

* County boards of taxation are state agencies which exercise administrative authority on a county-wide basis regarding the local property tax system. *N.J.S.A.* 54:3-1 *et seq.* A separate county board of taxation sits in each of New Jersey's 21 counties. *N.J.S.A.* 54:3-2.

> . . . secure the taxation of all property in the county at its taxable value as prescribed by law, in order that all property, except such as shall be exempt by law, shall bear its full and just share of taxes. [*N.J.S.A.* 54:3-13];
>
> . . . issue such directions as may be necessary to carry into effect the provision of this title. [*N.J.S.A.* 54:3-14];
>
> . . . have supervision and control over all officers charged with the duty of making assessments for taxes in every taxing district in the county. Such officers shall be subject to, and shall, in making assessments, be governed by such rules, orders or directions as may be issued by the county board, in the enforcement of the objects of this title [*N.J.S.A.* 54:3-16].

In addition, the Legislature has conferred upon the boards comprehensive authority to:

> . . . revise, correct and equalize the assessed value of all property in the respective taxing districts, increase or decrease the assessed value of any property not valued at its taxable value, less property omitted from any assessment, as provided by law, at its taxable value, and in general do everything necessary for the taxation of all property in the county at its taxable value. [*N.J.S.A.* 54:4-47].

Since the first judicial directive requiring valuations to correct inequities of assessment practices in *Switz v. Middletown Twp.*, 23 *N.J.* 580, 130 *A.*2d 15 (1957), the New Jersey judiciary has consistently sustained the authority of the county boards to direct municipalities to implement programs of revaluation. In *Switz*, where a property owner prevailed in an action in lieu of mandamus to compel reassessment against the municipality in which the property was located, and in *Ridgefield Park v.*

Bergen County Board of Taxation, 31 *N.J.* 420, 157 *A.*2d 829 (1960), app. dism. 365 *U.S.* 648 (1961), where a municipality and several of its taxpayers were allowed to maintain a similar action against other municipalities within the county, county boards were joined as defendants. In neither case, however, did the New Jersey courts regard the county boards, which are essentially supervisory bodies with respect to the proper maintenance of assessment rolls, as the appropriate agencies to conduct municipal revaluations. That responsibility rested with the municipalities and their assessors:

> In *Switz* it was noted that basically the problem in many, if not most, of the municipalities was that the assessment rolls were out of hand and hence nothing short of municipal-wide revaluations would bring order out of chaos; that the county board had neither the time nor the funds for so massive an effort; and that accordingly a judgment directing it to perform the basic duties of the assessors would be unwarranted. We expressed our confidence that if the local assessors did their job, the county board would not fail in its assigned role. We have no reason to feel differently about the county board in the present case. [*Ridgefield Park v. Bergen County Board of Taxation, supra*, 31 *N.J.* at 432, 157 *A.*2d at 835].

Switz and *Ridgefield Park* were comparatively early cases in the continuing history of the efforts to secure assessments at full taxable value as prescribed by the New Jersey Constitution and statutes and to eliminate inequities caused by the failure of municipalities to do so voluntarily. The law is not self-executing and the county boards are frequently confronted with municipalities that are unwilling to implement revaluations. In these circumstances, a county board has no recourse, if it is to execute its constitutional and statutory mandate, but to

order a lax municipality to revalue and, if the order is disregarded, to seek enforcement of the law by judicial compulsion. The New Jersey courts have sustained the authority of a county board to order a revaluation and, where necessaary, to seek its enforcement by court action. *Essex County Board of Taxation v. Newark*, 73 *N.J.* 69, 372 *A.*2d 607 (1977).

The revaluation order issued by the Camden County Board of Taxation and directed at Cherry Hill was thus consistent with well-settled New Jersey law. It stems from a recognition that the direct responsibility for the maintenance of assessments at the prescribed level of full value rests with the municipal tax assessor. *N.J.S.A.* 54:4-23. It is when the municipal assessor is unable or unwilling to correct widespread deficiencies that the county board orders general revaluation, but then only in accordance with established guidelines and only upon approval by the New Jersey Director of the Division of Taxation.

A municipality's avenue of appeal from a board's order to revalue is clearly established:

> Certainly a municipality is entitled at some point to be heard as to whether the order of the Board seeking to compel revaluation is proper. Such an opportunity is available by direct appeal from the order of the particular county board of taxation to the Division of Tax Appeals. *N.J.S.A.* 54:2-35. In this case, as is set forth above, the taxing districts were given ample opportunity to present facts and arguments before the Division of Tax Appeals. That they chose to forego this opportunity cannot now afford them a basis for complaining that they have not been heard. [*Bergen County Board of Taxation v. Bogota*, 114

N.J. Super 140, 146, 275 *A.*2d 158, 161 (App. Div. 1971)].

Since the *Bogota* decision, the Tax Court of New Jersey was created and assumed the jurisdiction formerly exercised by the Division of Tax Appeals as of July 1, 1979. *See N.J.S.A.* 2A:3A-1 *et seq.* Cherry Hill exercised its right of appeal to challenge the revaluation order before the Tax Court of New Jersey and was unsuccessful. Cherry Hill simply failed to present a cogent record reflecting the impropriety of the revaluation order. The proceedings in the New Jersey courts involved strictly the factual question as to whether the local property assessments existing in Cherry Hill needed to be revalued on a municipal-wide basis. The factual record involved various statistical data reflecting a convincing disparate assessment pattern requiring a revaluation.

Cherry Hill never raised any federal constitutional issue at the trial and appellate proceedings of this matter. The contention that the challenged revaluation order violated Cherry Hill's constitutional right to equal protection of the law is being raised for the first time in this proceeding. The New Jersey courts found ample evidence in the record warranting the implementation of the revaluation program based solely on a factual analysis of the record.

The record below thus reflected no disparity of treatment with regard to revaluations among other municipalities in Camden County as improperly alleged by the petitioner. There was no evidence presented that any taxing district in Camden County reflecting a more disparate assessment pattern was not in the process of having its real property revalued. There is clearly no factual record to

support any claim for unequal treatment. Moreover, the petition for certiorari ignores the fundamental deference to be paid to state taxing schemes under the Equal Protection Clause. *See Lehnhausen v. Lake Shore Auto Parts Co.*, 410 *U.S.* 356, 359 (1973); *Madden v. Kentucky*, 309 *U.S.* 83, 87-88 (1940). Thus, even if the equal protection issue had been properly raised below, it is an issue of no merit, having no factual or legal support warranting further review by this Court.

In summary, therefore, the petition is seeking further review of a lower appellate court decision dismissing an unsupported challenge to a local property tax revaluation order. The dismissal relates to a narrow factual issue under New Jersey law that does not implicate any federal constitutional standard. The petition for a writ of certiorari plainly does not raise a question of constitutional dimension which warrants the granting of such extraordinary relief. Since the decision by the New Jersey court below did not implicate any federal question, the petition should be denied.

———o———

CONCLUSION

For the aforementioned reasons, it is respectfully submitted that the petition for writ of certiorari should be denied.

Respectfully submitted,

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